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**Testimony of Sandra Sherlock White
Former Chair of the Elder Law Section
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**IN SUPPORT OF HB 6027
AAC PROBATE COURT REFORMS**

**Judiciary Committee
March 9, 2009**

Representative Lawlor, Senator McDonald and members of the Judiciary Committee, thank you for allowing me to testify before you today on the matter of Connecticut's probate courts. My name is Sandra Sherlock White. I am former Chair of the Connecticut Bar Association's Elder Law Section, an adjunct Professor of Law at the University of Connecticut Law School where I teach Elder Law, and an attorney practicing elder law in Connecticut.

The members of the Elder Law Section support the continuation of probate courts in Connecticut. However, we do support changes to the current probate court system in Connecticut. To that end, the Connecticut Bar Association, on behalf of the Elder Law Section, supports modernization and reform of the probate court system in order to address the fundamental principles of:

- Increased professionalism.
- Increased jurisdiction.
- Increased responsibility of the state to fund the system.
- Centralized fiscal control of the probate courts statewide.
- Decreased conflicts of interest.
- Improved probate court districting.

Members of the Elder Law Section are in probate courts on a daily basis, and, thus, have first hand knowledge of both the shortcomings of the current probate court system and its benefits. Probate courts handle some of the most sensitive and personally important cases for many of our most vulnerable citizens. The probate courts determine issues of life support and end of life care; whether an individual will lose his or her fundamental Constitutional liberty interests including the right to choose where to live and what health care he or she will receive; whether incapacitated individuals will live at home or be institutionalized; disputed and undisputed issues regarding wills and trusts; whether individuals should be involuntarily committed to psychiatric facilities; whether individuals should be required to take psychoactive drugs even when they object to doing so; and issues regarding children and mentally retarded individuals.

Increased professionalism

The Elder Law Section construes the term "professionalism" broadly to include a number of factors. In short, we believe, and recommend, that every probate court in the state should be accessible, should have judges who are attorneys licensed to practice in the State of Connecticut, should have professionally trained clerks and staff, and should be subject to statewide rules, procedures and practices.

Our clients often have needs that must be addressed as quickly and efficiently as possible. Every court should be accessible in terms of hours of operation. Given that more and more assisted living facilities, nursing homes and the like are being constructed in the smaller towns in the state, part-time courts are no longer tenable. A court that is only open for a few hours a week is not accessible, and cannot deal with emergency matters. Probate courts should be open to the public for the conduct of court business at least forty hours per week Monday through Friday, except on official holidays.

The nature of the cases handled by our members is becoming increasingly complicated and adversarial, and this trend will continue for the foreseeable future. This is exacerbated by constantly changing laws and regulations effecting various benefits programs that are crucial to many of our clients, and not infrequent hearings where a representative of the department of social services or the attorney general's office is in attendance. Given these factors, it is essential that probate court judges, clerks and staff be properly and professionally trained.

In addition, it is essential that rules, procedures and practices be consistent among all of the courts. We thus recommend that there be oversight, either by the probate court administrator's office or other authority, to ensure that cases are handled, and rules and procedures are applied, in the same manner throughout the system.

Increased jurisdiction

Individuals and parties to a probate matter deserve the peace of mind to know that after hours of preparation and hearings, a decision of a probate court is valid, and is binding unless timely appealed. These individuals further deserve a system where, if an appeal of a probate court order is made, they need not start over from the beginning. Under the current laws of Connecticut except in limited probate matters, an appeal from a probate court to a superior court is an appeal *de novo*. This contributes to the perception of our probate courts as not really being courts of law. We do not support the notion of transferring contested matters to superior court.

Increased responsibility of the state to fund the probate courts

Connecticut may well be the only state in the union that does not contribute towards the costs of supporting all of its courts. Currently, the probate courts in this state are designed to be principally self-funded. However, the probate system has been operating with a growing budget deficit. Indeed, it is anticipated by the Probate Court Administration that

the probate court administration fund will be depleted by July 1, 2010. The citizens of Connecticut deserve better, and we, therefore, recommend that the state contribute to the costs of its probate court system.

Centralized fiscal control of the probate courts statewide

Currently, each probate court is left to its own devices to set its own budget. Each judge determines the number of staff, the salaries of staff, the amounts of expenses, and the compensation for the judge (who typically takes the remainder of the fees generated by the court.) This system results in inequities and inefficiencies. Consequently, we recommend that the probate court administrator's office be given the authority of fiscal control to ensure uniformity and improve economic efficiencies, and that this be put in place prior to any funding of the system by the state.

Decreased conflicts of interest

Probate judges are elected, and this means that they all campaign for the position. Probate judges appoint attorneys to represent parties in their courts, and there is no prohibition against a probate judge, even a full time probate judge, from practicing law. This all creates situations where there is at least an appearance of impropriety or conflict of interest and where there is not a practical "remedy" currently. For example, assume you are appearing in probate court X, and the probate judge from court Y is appearing in court X as attorney for another party. Assume that you, as an attorney, appear often in both court X and Y. This is not an unusual situation. We support a requirement that probate court judges be full-time judges in order to eliminate this inherent conflict of interest.

Improved probate court districting

Presently there are 117 probate courts in Connecticut, the largest number in the nation. We support a significant reduction in the number of probate courts in Connecticut to enhance the professionalism, accessibility, uniformity of standards, and economic efficiencies of the probate court system. In order to facilitate this consolidation, we support a carefully considered and rational approach specifically including the use of probate court planning committees. The plan for consolidation must address geographic accessibility of probate courts. Travel over long distances presents a significant problem for those that use the probate courts. Individuals appearing in probate court are often elderly, disabled, and indigent. Many are quite frail. Geographic considerations are significant. We do not support the use of senatorial districts as a basis for probate court districting. Senatorial districts often geographically divide towns, often encompass long distances and are redistricted every ten years.

The Elder Law Section of the Connecticut Bar Association urges this Committee to adopt recommendations for legislation that will address the dramatic need for reform and modernization that the citizens of Connecticut deserve.

